

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA

Plaintiff,

v.

3.392 ACRES OF LAND, MORE OR LESS,
SITUATE IN STARR COUNTY, STATE OF
TEXAS; AND THE UNKNOWN HEIRS OF
JUAN ANTONIO SILVA, ET AL.,

Defendants.

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CASE NO.: 7:20-CV-317

**UNOPPOSED MOTION TO DISMISS THE UNKNOWN HEIRS OF ANDRES
HINOJOSA, UNKNOWN HEIRS OF JUAN ANTONIO SILVA, UNKNOWN HEIRS OF
LUCILA SILVA CANTU, and UNKNOWN HEIRS OF ELOY SILVA**

The Plaintiff, United States of America, moves pursuant to Rule 71.1(i)(2) of the Federal Rules of Civil Procedure to dismiss the UNKNOWN HEIRS OF ANDRES HINOJOSA, UNKNOWN HEIRS OF JUAN ANTONIO SILVA, UNKNOWN HEIRS OF LUCILA SILVA CANTU, and UNKNOWN HEIRS OF ELOY SILVA, as unnecessarily or improperly added party Defendants in this case.

BACKGROUND

1. On October 13, 2020, pursuant to the Declaration of Taking Act (40 U.S.C. § 3114), and Federal Rule of Civil Procedure 71.1, the United States commenced this condemnation action by filing a Complaint in Condemnation¹ and Declaration of Taking² to acquire a fee simple interest

¹ Dkt. No. 1.

² Dkt. No. 2.

in property identified as Tract RGV-RGC-1003 and RGV-RGC-1005.³ The interests and property are more particularly described at Schedules “C”, “D”, and “E” of the Declaration.⁴

2. The United States deposited \$19,591.00 as the estimated just compensation in this case.⁵ The United States acquired a fee simple interest, subject to existing easements for public roads and highways, public utilities, railroads, and pipelines; and subject to the mineral interests of third parties; excepting and reserving to the Grantor all interests in minerals and appurtenant rights for the exploration, development, production and removal of said minerals; reserving to the owners of the land identified as Lazaro Vela Survey, abstract number 354, Porción 57, Starr County, Texas, and identified in Final Decree of Partition, instrument number 2019-353318, Official Records of Starr County, Texas, (Parcel 9-B), reasonable access to and from the owners’ lands lying between the Rio Grande River and the border barrier through opening(s) or gate(s) in the border barrier between the westernmost mark labeled “Beginning” and easternmost mark labeled “Ending” depicted on the map below; excepting and excluding all interests in water rights and water distribution and drainage systems, if any, provided that any surface rights arising from such water rights or systems are subordinated to the United States’ construction, operation and maintenance of the border barrier.⁶

3. The estate acquired in Tracts RGV-RGC-1003 and RGV-RGC-1005 contains 1.939 acres and 1.453 acres, respectively (collectively referred to as “Subject Tracts”), out of a larger parcel 30.764 acres in size.⁷

³ Schedules “C,” “D,” & “E,” Dkt. No. 1.

⁴ *Id.*

⁵ Dkt No. 6.

⁶ Dkt No. 1.

⁷ *Id.*

4. The United States conducted an exhaustive search to identify, locate, and confirm the living heirs of Andres Hinojosa, Juan Antonio Silva, Lucila Silva Cantu, and Eloy Silva. The administration of Andres Hinojosa's estate was unknown to the United States at the commencement of this action despite exhaustive research conducted; accordingly, the United States identified the "Unknown Heirs of Andres Hinojosa," as having an interest in the property identified as Tracts RGV-RGC-1003 and RGV-RGC 1005.⁸ Likewise, the United States identified the "Unknown Heirs of Juan Antonio Silva," "Unknown Heirs of Lucila Silva Cantu," and "Unknown Heirs of Eloy Silva," as having an interest in the property identified as Tracts RGV-RGC-1003 and RGV-RGC 1005.⁹

5. The United States commenced the publication of the Notice of Condemnation once a week for three successive weeks in *The Monitor*.¹⁰ Notice appeared by publication on December 18, 2020, December 23, 2020, and December 30, 2020.¹¹ On January 15, 2021, the United States filed a Certificate of Publication, thereby definitively effectuating service on named Defendants, "Unknown Heirs of Andres Hinojosa," "Unknown Heirs of Juan Antonio Silva," "Unknown Heirs of Lucila Silva Cantu," and "Unknown Heirs of Eloy Silva."¹²

6. After the commencement of this action, the United States discovered the following information regarding Andres Hinojosa:

Andres Hinojosa

The "Unknown Heirs of Andres Hinojosa" were devisees of entitlements strictly pertaining to "oil, gas, and other minerals," by virtue of a deed dated June 26, 1989, and recorded on

⁸ *Id.*

⁹ *Id.*

¹⁰ Dkt No. 16.

¹¹ Dkt No. 23.

¹² *Id.*

December 20, 2001 in Book 917 at Page 584 and as Instrument Number 2001-219878.¹³ The unknown heirs of Andres remain unaffected from the taking outlined set forth in Schedule E of the Declaration.¹⁴ Thus, the “Unknown Heirs of Andres Hinojosa” should be dismissed as an unnecessarily or improperly named party in this case.

7. The evidence presented from the Official Deed Records, Starr County, Texas, indicates title is vested in the Heirs of Juan Antonio Silva, including but not limited to Lucila Silva Cantu, Lila Silva de la Garza, Idalia Paula Silva Ruiz, and Eloy Silva by virtue of a Final Decree of Partition with Surveys Attached and Incorporated, which is on file in Cause No. DC-12-389, *Hortensia Weyand et al v. Mercedes Ledford et al*, in the District Court of Starr County, Texas.¹⁵

8. The United States has since obtained the following information regarding Juan Antonio Silva, Lucila Silva Cantu, and Eloy Silva:

Juan Antonio Silva

Juan Antonio Silva was survived by his wife, Teresa De La Garza Silva.¹⁶ Juan Antonio Silva and Teresa De La Garza Silva were married on November 11, 1945.¹⁷ Juan Antonio Silva died on January 20, 1965 and Teresa De La Garza Silva died on September 5, 1989.¹⁸ Together, they were survived by their four children: Lucila Silva, Lilia Silva, Idalia Silva, and Eloy Silva.¹⁹ Juan Antonio Silva and Teresa De La Garza both died without a written will and there has been no administration of their estates.²⁰ Juan Antonio Silva and Teresa De La Garza’s undivided interest in the Subject Property was owned as community property, and therefore, has now passed to their

¹³ See Govt. Ex. 1.

¹⁴ Schedule “E” Dkt No. 1.

¹⁵ See Govt. Ex. 2.

¹⁶ See Govt. Ex. 3 and Govt. Ex. 4.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

three children: Lucila Silva, Lilia Silva, Idalia Silva, and Eloy Silva.²¹ *See* Tex. Estates Code §§ 201.002 (“Separate Estate of an Intestate”), § 201.003 (“Community Estate of an Intestate”). Thus, the “Unknown Heirs of Juan Antonio Silva” should be dismissed as an unnecessarily or improperly named party in this case. Lucila Silva and Eloy Silva died on May 15, 2019 and May 1, 2016, respectively.²² Lilia Silva and Idalia Silva are both alive and are now named Defendants in this case.²³

Lucila Silva Cantu

Lucila Silva Cantu survived her husband, Rodolfo Cantu.²⁴ Lucila Silva Cantu and Rodolfo Cantu were married on August 14, 1966.²⁵ Her husband, Rodolfo Cantu predeceased her on September 14, 2016. Lucila Silva Cantu died on May 15, 2019.²⁶ Together, they were survived by three children: Robert Cantu, Richard Anthony Cantu, and Rodolfo Cantu, Jr.²⁷ Lucila Silva Cantu died without a written will and there has been no administration of her estate.²⁸ Moreover, Lucila Silva Cantu’s undivided interest in the Subject Property was owned as community property, and therefore, has now passed to her three children: Robert Cantu, Richard Anthony Cantu, and Rodolfo Cantu, Jr. *See* Tex. Estates Code §§ 201.002 (“Separate Estate of an Intestate”), § 201.003 (“Community Estate of an Intestate”). Thus, the “Unknown Heirs of Lucila Silva Cantu” should be dismissed as an unnecessarily or improperly named party in this case. Moreover, Robert Cantu,

²¹ *Id.*

²² *Id.*

²³ Schedule “G” Dkt No. 1.

²⁴ *See* Govt. Ex. 5.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

Richard Anthony Cantu, and Rodolfo Cantu, Jr. are via Court Order now named Defendants in this case.²⁹

Eloy Silva

Eloy Silva survived his wife, Araceli Silva.³⁰ Eloy Silva and Araceli Silva were married on October 7, 1978.³¹ Araceli Silva's death terminated the marriage. Eloy Silva died on May 1, 2016.³² Together, they were survived by three children: John Anthony Silva, Eloy Silva, Jr., and Richard Eric Silva.³³ Eloy Silva died without a written will and there has been no administration of his estate.³⁴ Moreover, Lucila Silva Cantu's undivided interest in the Subject Property was owned as community property, and therefore, has now passed to his three children: John Anthony Silva, Eloy Silva, Jr., and Richard Eric Silva. *See* Tex. Estates Code §§ 201.002 ("Separate Estate of an Intestate"), § 201.003 ("Community Estate of an Intestate"). Thus, the "Unknown Heirs of Eloy Silva" should be dismissed as an unnecessarily or improperly named party in this case. Indeed, John Anthony Silva, Eloy Silva, Jr., and Richard Eric Silva are via Court Order now named Defendants in this case.³⁵

9. On December 28, 2020, the United States filed their Opposed Motion to Add Party Defendants³⁶ and on January 8, 2021, via Court Order,³⁷ Richard A. Cantu, John Silva, Richard Silva, Robert Cantu, Rodolfo Cantu, and Eloy Silva, Jr., were added named Defendants in this case. On January 20, 2021, the United States personally served Richard A. Cantu at his home address

²⁹ Dkt No. 19.

³⁰ *See* Govt Ex. 6.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Dkt No. 19.

³⁶ Dkt No. 17.

³⁷ Dkt No. 19.

of 6013 North 10th Street, McAllen, TX 78504.³⁸ On January 27, 2021, the United States personally served John Silva at his home address of 5224 North Trosper Road, Mission, TX 78573.³⁹ On January 27, 2021, the United States personally served Richard Silva at his home address of 3308 Princeton Avenue, McAllen, TX 78504.⁴⁰ Also, on January 27, 2021, the United States personally served Robert Cantu at his home address of 219 Leo Najo Street, Apt. 1, Mission, TX 78572.⁴¹

10. After due and diligent search efforts, the United States was unable to locate Eloy Silva⁴² and Rodolfo Cantu.⁴³ Therefore, the United States commenced the publication of the Notice of Condemnation once a week for three successive weeks in *The Monitor*.⁴⁴ Notice appeared by publication on March 12, 2021, March 19, 2021, and March 26, 2021.⁴⁵ On March 29, 2021, the United States filed a Certificate of Publication, thereby definitively effectuating service on named Defendants, Eloy Silva and Rodolfo Cantu, and completing service on any remaining named Defendants.

11. Based on the foregoing, the United States prays this Court will grant its motion, and order the UNKNOWN HEIRS OF ANDRES HINOJOSA, UNKNOWN HEIRS OF JUAN ANTONIO SILVA, UNKNOWN HEIRS OF LUCILA SILVA CANTU, and UNKNOWN HEIRS OF ELOY SILVA, be dismissed from this case as unnecessarily and improperly joined parties.

CERTIFICATE OF CONFERENCE

12. The undersigned counsel conferred with Defendant Richard Cantu on April 16, 2021 on the contents of the instant motion. Defendant Richard Cantu has been the point of contact

³⁸ Dkt No. 24.

³⁹ Dkt No. 25.

⁴⁰ Dkt No. 26.

⁴¹ Dkt. No. 27.

⁴² Dkt No. 28.

⁴³ Dkt No. 29.

⁴⁴ Dkt No. 16.

⁴⁵ Dkt No. 23.

in handling the negotiations on behalf of the other named Defendants with an ownership interest, Robert Cantu, Rodolfo Cantu, John Silva, Richie Silva, Eloy Silva Jr., Lilia Silva de la Garza, and Idalia Paula Silva Ruiz. Defendant Richard Cantu stated he and his family members, the remaining Defendants in this case, were unopposed to its contents. Therefore, the instant motion is filed as unopposed.

Respectfully submitted,

JENNIFER B. LOWERY

Acting United States Attorney
Southern District of Texas

By: *s/ J. Parker Gochenour*

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CERTIFICATE OF SERVICE

I, J. Parker Gochenour, Assistant United States Attorney for the Southern District of Texas, do hereby certify that on this 4th – 5th day of May 2021, a copy of the foregoing was served on all parties in accordance with the Federal Rules of Civil Procedure.

By: *s/ J. Parker Gochenour*

J. PARKER GOCHENOUR

Assistant United States Attorney